

This document has been redacted for Public Interest Immunity claims made by Victoria Police. These claims are not yet resolved.



VICTORIAN GOVERNMENT SOLICITOR'S OFFICE

Your reference:

Our reference: 942607

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Superintendent Peter Lardner
Civil Litigation Division
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By email: [REDACTED]@police.vic.gov.au

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subject to Legal
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Dear Superintendent Lardner

Gobbo v State of Victoria & Ors - Supreme Court proceeding No 2316 of 2010

Name	Party	Representative
Nicola Gobbo	Plaintiff	Piper Alderman
State of Victoria	First Defendant	VGSO
Simon Overland	Second Defendant	VGSO
Christine Nixon	Third Defendant	VGSO

Purpose

- To advise you in relation to the mediation scheduled in this proceeding on 11 August 2010 and to seek your instructions.

Background

- On 13 February 2009, Paul Dale, a former police officer, was charged with the murder of Terence Hodson at Kew between 15 and 16 May 2004. Nicola Gobbo (the plaintiff), a former barrister, was one of the key prosecution witnesses. She is 38 years old.
- Victoria Police conducted a threat assessment in relation to the safety and security of the plaintiff as a result of her agreeing to give evidence against Mr Dale. The threat to the plaintiff was assessed as "Extreme", the highest rating of risk. Victoria Police offered to provide the plaintiff with appropriate protection and assistance under the *Witness Protection Act 1991*. However, an agreement was not able to be reached with the plaintiff in relation to the terms of the protection and assistance to be offered to the plaintiff. The main area of dispute has been the plaintiff's refusal to agree to [REDACTED] Inclusion in the Victoria witness protection program (the Program) is voluntary. Victoria Police made it a condition of the plaintiff's inclusion in the Program that she [REDACTED]. Another area of difficulty in the

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negotiations was reaching agreement over the [REDACTED] that ought to be provided to the plaintiff.

4. The criminal proceeding against Mr Dale was discontinued by the Director of Public Prosecutions on 4 June 2010 as the result of the death of another key prosecution witness.

The civil proceedings

5. On 29 April 2010, the plaintiff filed proceedings in the Supreme Court naming the State of Victoria, Simon Overland and Christine Nixon as defendants. The plaintiff alleges causes of action in contract, estoppel, breach of fiduciary duty and negligence. The essence of the plaintiff's claim is that she was promised by Victoria Police that, in the event that she agreed to give evidence against Mr Dale, she would be "no worse off" financially or otherwise. She claims to be entitled to compensation up to the sum of \$20,000,000. Most of this amount would appear to relate to future economic loss as the plaintiff claims that her successful career trajectory would inevitably have led to her being appointed a Senior Counsel followed possibly by an appointment to the bench.
6. The plaintiff claims to be suffering from some serious medical conditions. She had a stroke in 2004. She claims that the conduct of Victoria Police has detrimentally affected her health and ruined her career causing her substantial economic loss.
7. We have briefed Michael Wheelahan SC, Rowena Orr and Michael Rush of counsel on behalf of the defendants. A defence drafted by counsel was filed and served on 25 June 2010. In the defence, the defendants deny that there was any promise made to the plaintiff by Victoria Police in relation to the provision of protection and assistance. Further, the defendants claim that, in the event that the Court finds that an agreement was made with the plaintiff, then it is subject to an overarching term of reasonableness.

Mediation

8. A directions hearing was held in the Supreme Court before Justice Kaye on 18 June 2010. His Honour made an order requiring the parties to mediate the matter by 12 August 2010.
9. A mediation has been scheduled to take place on 11 August 2010. Former High Court judge Ian Callinan has been appointed as mediator.
10. Counsel provided advice in conference yesterday in relation to the plaintiff's prospects of success in the proceeding and also in relation to the damages the plaintiff may be awarded by the Court if she were successful.

Liability

11. In counsel's opinion, it is very likely that the plaintiff will be successful in her estoppel claim in that the Court will find that she was told by Victoria Police that she would be "no worse off" in the event that she agreed to give evidence and that she then acted to her detriment in reliance on this representation. We agree with counsel's advice.

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Quantum

12. In the event that the plaintiff is successful in her estoppel claim, she will be entitled to damages from the State of Victoria. Counsel have provided advice in relation to the possible awards of damages the plaintiff may receive from the Court. We attach a copy of a table prepared by counsel which identifies five possible scenarios in relation to an award of damages.

Scenario 1

13. The first scenario is calculated on the basis that the plaintiff is awarded damages to include income support for 5 years at the level she was receiving prior to agreeing to give evidence against Mr Dale. This figure is \$1,292,788.

Scenario 2

14. The second scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale minus an amount to reflect the plaintiff's income received on the basis that she were successfully re-employed after 5 years. This figure is \$2,258,518. In our view, this is the most reasonable option.

Scenario 2b

15. The third scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale. This figure is \$3,197,148.

Scenario 3

16. The fourth scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale (increased on the assumption that the plaintiff was appointed Senior Counsel at the age of 43) minus an amount to reflect the plaintiff's income received on the basis that she were successfully re-employed after 5 years. This figure is \$6,121,441.

Scenario 3a

17. The fifth scenario is calculated on the basis that the plaintiff is awarded damages to include income support until the age of 65 at the level she was receiving prior to agreeing to give evidence against Mr Dale (increased on the assumption that the plaintiff was appointed Senior Counsel at the age of 43). This figure is \$7,501,057.
18. We confirm that counsel are of the view that the Supreme Court is likely to adopt the approach represented by Scenario 2. We agree with counsel. However, we emphasise that there is a risk that the Court may award a higher sum of damages possibly based on the calculations identified in the fourth and fifth scenarios.

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Factors supporting a settlement of the claim

Model litigant principles

19. As a model litigant, the State of Victoria is obliged to resolve claims fairly and avoid litigation if possible where it is reasonably clear that it is seriously exposed on liability. Given the very clear advice of counsel that the plaintiff is likely to be successful in her estoppel claim, we are of the view that it is the obligation of the State to make all reasonable efforts to settle this proceeding for a reasonable sum.

Exposure of sensitive information

20. A trial in this case will involve scrutiny of the procedures adopted by Victoria Police in dealing with informers and in obtaining the cooperation of witnesses in criminal proceedings and will involve an examination of the limitations of the Program. The trial is likely to receive a great deal of publicity which could be damaging to Victoria Police and the administration of the criminal justice system.
21. Another sensitive issue which will be exposed in the event this matter proceeds to trial is the history of the plaintiff's relationship with Victoria Police. We understand that the plaintiff has provided information to Victoria Police in matters other than the Dale prosecution and that she may still be providing information to Victoria Police. Clearly, the plaintiff's status as a police informer is highly confidential and sensitive and its disclosure is likely to further increase the risk to her safety.

Discovery

22. The discovery process in this proceeding will be a significant task. Many, many hours of conversations between police members and the witness are currently being transcribed. This expensive process will need to continue if the matter is to proceed to trial. Further, relevant email communications between the members will need to be extracted from the Victoria Police database.
23. The discovery process will also be complicated by the sensitivity of the information being disclosed. Applications will need to be made objecting to production of many categories of documents on the basis of public interest immunity. Further, it is likely that suppression orders will also need to be made to prohibit publication of sensitive information which is tendered or given in evidence.
24. The sensitivity of the information relevant to this matter will also compromise the ability of counsel to adequately obtain and review the information in preparation for trial. We have already experienced significant difficulties in this regard.

Diversion of police resources

25. Many police members are likely to be called as witnesses at the trial of this proceeding. In preparation, they will be required to spend a significant amount of time providing detailed instructions to counsel in conference. This will divert the police members away from their core operational activities.

Legal costs

26. Proceeding to a trial will result in the defendants incurring significant legal costs. We would estimate that the defendants will incur between \$700,000 - \$1,000,000 in legal

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costs between now and the conclusion of a trial. Further, in the likely event that the plaintiff is successful in her estoppel claim, then it is also likely that the defendants will be ordered to pay the plaintiff's legal costs.

Settlement premium

27. In our view, there are cogent reasons to support the payment of an additional sum to settle this proceeding over and above the amount that the plaintiff may reasonably be expected to be awarded by way of damages from the Court. This additional sum would represent the value given by Victoria Police on the benefits of avoiding a trial. As identified above, these benefits would include avoiding:
- exposure of sensitive information damaging to the criminal justice system;
 - diversion of police resources; and
 - significant legal costs being borne by the tax payer.
28. In our view, an additional sum in the order of \$1 million dollars would not be inappropriate to reflect the value of these additional benefits. However, ultimately the value placed upon these benefits is a matter for you.
29. We await your instructions in relation to the amount of money that you are prepared to pay to settle this proceeding. If you have any queries, please contact David Ryan or Monika Pekevka.

Yours faithfully
Victorian Government Solicitor's Office



David Ryan
Acting Assistant Victorian Government Solicitor

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